STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

GALLATIN RIVER COMMUNICATIONS L.L.C. D/B/A CENTURYLINK	)	
	)	
Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 To Establish the Rates, Terms, and Conditions of Interconnection with NTS Services Corp.	)	**Docket No. 11-0567**

OPPOSITION TO MOTION TO STRIKE

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OPPOSITION TO MOTION TO STRIKE

NTS Services Corp. ("NTS"), by and through its counsel, hereby provides this Opposition to CenturyLink's Motion to Strike Issues Raised in NTS' Response ("Motion"). CenturyLink's ("CTL") Motion is a clear, self-serving attempt to force interconnection pricing that NTS has never agreed to accept.

CTL's Motion Fails to Meet the Legal Standard

CTL does not address the legal standard required for a motion to strike to succeed. This is not surprising given that CTL's Motion fails even a cursory review of that standard. Motions to strike are common in administrative law practice as well as in state and federal courts. The goal is to promote efficiency of such adjudications by preserving the parties' resources and enhancing judicial economy. Motions to strike are generally not favored, however, because they seek to limit a party's ability to pursue or defend claims.

In granting a motion to strike, a judge can exclude immaterial issues that would delay a proceeding, unnecessarily expand discovery, or lead to irrelevant evidence at hearing. In this situation, however, none of those factors are present. The additional issues raised by NTS are simply pricing issues—the same type of issues already being reviewed in the arbitration. Discovery will remain limited to pricing issues and no additional discovery will be required by the allegedly new issues raised by NTS. Any analysis of the TELRIC cost study currently underway will simply need to be applied to the additional concerns raised in NTS' Response to the Arbitration.

CTL Should Not Independently Determine the Open Issues for Arbitration

CTL continues to insist that NTS explicitly agreed that there were no other issues that needed to be discussed. This is absolutely false. During this proceeding, CTL has continued to mischaracterize the correspondence between the parties. The April 13, 2011 letter from counsel for NTS to CTL does state that NTS did not want to address terms and conditions in subsequent calls, but did not rule it out either. Instead, NTS attempted to make clear that the company wanted to focus negotiations on ten important rate elements. There is not an explicit statement in the letter, or any others, that NTS agrees with all rates, terms, and conditions other than the ten listed. NTS believed that given the limited amount of time to come to an agreement and avoid arbitration, those listed pricing issues should be negotiated first. If agreement could not be reached on all ten, then arbitration would be unavoidable. NTS did not foreclose the right to raise additional pricing issues, particularly for non-recurring charges for services that are currently provided by CTL without charge. Moreover, during both of the final calls in July 2011

between the Parties, NTS stated that there were additional pricing issues it had discovered since the April 13th letter but that consensus was needed on the DS-0 and DS-1 pricing before those could even be addressed. Just before the filing window was to close, CTL made a final, take-it-or-leave-it offer and NTS declined. CTL filed for arbitration soon thereafter. So in effect, CTL is arguing that because we could not come to an agreement on the two UNE loop issues, NTS was foreclosed from raising any additional issues for inclusion in the arbitration.

To avoid this situation and any confusion, some state utility commissions require the parties to file a joint arbitration matrix. The parties agree the issues to be raised in the arbitration and each party describes its position. Instead of this protocol, CTL chose to file for arbitration without asking for any further input from NTS as to what other issues should be addressed in the proceeding. CTL also chose to provide its perception of NTS' positions towards the two issues it raised in its petition. In effect, CTL decided what the "open issues" were, described NTS' alleged positions, and filed accordingly. Such behavior could not have been anticipated by section 252(b)(1) of the Telecommunications Act of 1996 ("the Act"). CTL caused this situation by not cooperating with NTS prior to filing for arbitration. CTL's Motion should not reward this treachery by granting the Motion.

Finally, the case relied up on by CTL is inapposite as well. The case specifically found that, "The party petitioning for arbitration may not use the compulsory arbitration provision to obtain arbitration of issues that were not the subject of negotiations." *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003, at par. 26). The facts are backwards. In that case, Coserv attempted to

increase the scope of the arbitration issues in its petition for arbitration to include issues that Southwestern Bell was not required to, and therefore refused to, negotiate. That is not the situation here. Here, the petitioning party is attempting to limit the scope of issues that are subject to arbitration under the Act by essentially pretending they never existed and filing for arbitration without consulting with NTS.

Conclusion

CTL's Motion should be denied for the simple reason that granting it would unfairly limit NTS' ability to challenge the full range of charges, many completely new and somewhat novel, proposed by CTL. Moreover, granting the Motion would effectively approve the charges associated with the six additional issues raised by NTS. At some point in the future, another competitive carrier would surely object to those rates and potentially need to seek arbitration at the Commission. Dealing with these issues now will thus preserve the Commission's limited resources.

Respectfully submitted,

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Kristopher E. Twomey
Counsel to NTS Services Corp.

CERTIFICATE OF SERVICE

The undersigned attorney for NTS Services Corp. hereby certifies that this Response to the Petition for Arbitration was filed via the Illinois Commerce Commission's e-filing system with courtesy copies provided to the service list via email.

Kristopher E. Twomey
Counsel to NTS Services Corp.